

## AGRICULTURAL COVID-19 REQUIREMENTS

### May 28, 2021 Updates

Added section FULLY VACCINATED EMPLOYEES (page 10). Removed **section (4)** under TRANSPORTATION to align with the following section on fully vaccinated employees.

### May 7, 2021 Updates

**Subsection (p) – Isolation**, under GENERAL PROVISIONS FOR ALL WORKSITES AND WORK-RELATED FUNCTIONS, has been removed. Isolation requirements are now located in WAC 296-307-16102(2)/WAC 246-358-002(2).

**Subsection (4)**, under TRANSPORTATION, has been updated to reflect increased capacity for shelter groups who are fully vaccinated. This subsection will go into effect May 9, 2021.

### August 19, 2020 Updates

New **subsections (b)(ix), (b)(x), (o), and (p), and amended subsection (k)** under GENERAL PROVISIONS FOR ALL WORKSITES AND WORK-RELATED FUNCTIONS are in force.

### GENERAL PROVISIONS FOR ALL WORKSITES AND WORK-RELATED FUNCTIONS

- (a) **Applicability.** These requirements apply to orchards, fields, dairies, and all other operations expressly identified in WAC 296-307-006; all fruit- and vegetable-packing warehouses, whether owned by the grower or producer or not; and employer- or operator-provided transportation and housing. These requirements do not apply to meat or other food processing operations.

These requirements should be read to complement, not supplant WAC 246-358-002 and WAC 296-307-16102, “**Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure.**”

To the extent these requirements give rise to conflicting language by imposing additional requirements beyond those set forth in administrative rule, these requirements prevail.

- (b) **Definitions.** Consistent with WAC 296-307-009, the following definitions apply:
- (i) “**DOH**” means the Washington Department of Health.
  - (ii) “**Employee**” means a person providing personal labor in the business of the employer, including anyone providing personal labor under an independent contract. For purposes of these requirements, employees refer to individuals working in the agricultural industry.

“Worker,” when used in the context of housing, is synonymous with “employee.”

Individuals who support agricultural activities in office settings, e.g., sales, marketing,

and other professional services, are not included in the definition of “employee” for purposes of these rules. These individuals may instead fall under the governor’s Professional Services [memo](#) and related safety [requirements](#).

- (iii) **“Employer”** means a business entity having one or more employees, as defined above.
  - (iv) **“L&I”** means the Washington Department of Labor and Industries.
  - (v) **“Personal protective equipment”** (hereinafter “PPE”) means face coverings, masks, respirators, gloves, and any other equipment meant to protect against hazards, including chemicals and COVID-19.
  - (vi) **“Shelter group”** means a cohort of no more than fifteen (15) employees living and working together, in accordance with WAC 246-358-002(e) and WAC 296-307-16102(e).
  - (vii) **“Temporary worker housing operator”** (hereinafter “housing operator” or “operator”) has the same meaning as WAC 246-358-010(20) and WAC 296-307-16103, i.e., the individual or business holding legal title to the land beneath the housing or having the lawful control or supervision over the property.
  - (viii) **“Transportation provider”** means the employer or other individual or business responsible for providing transportation to employees.
  - (ix) **“Workforce”** means all employees that work for the same employer. For purposes of this provision, the “employer” includes all entities under an affiliated ownership group, as evidenced by common shareholders, board members, officers, business addresses, registered agents, and any other factors that indicate affiliation.
  - (x) **“Workplace”** means a location where a workforce may be present and working on behalf of the employer. An employer might have multiple workplaces, but one workplace may only be treated separately from another if the employees of one workplace never, under any circumstances, work alongside or otherwise interact with employees of the other.
- (c) **PPE.** Employers, operators, and providers must supply, at no cost to employees, all PPE mandated by these requirements, including gloves, goggles, face shields, face masks, and face coverings. PPE must be clean and available each workday.

Face coverings must be worn by all employees in accordance with the governor’s Proclamation [20-25.6](#), subsequent iterations of the proclamation, and the related interpretive guidance and exemptions set forth by L&I [here](#) and [here](#).

Should a cloth facial covering be the appropriate masking level, the face covering must conform to the DOH [guidelines](#) entitled **“Guidance on Cloth Face Coverings.”**

Employers, providers, and housing operators must adhere to current PPE rules for safety and health hazards.

- (d) **Physical Distancing.** Employers, providers, and housing operators must ensure physical distancing of six feet or more during all interactions within the scope of employment.

When strict physical distancing is not feasible for a specific task, other prevention measures, such as more protective PPE, barriers, and negative pressure ventilation, are required.

- (e) **Workplace Disinfection.** Employers must ensure that high-touch surfaces are disinfected prior to the start of each workday, and before and after the morning, lunch, and afternoon breaks. For employers with night shifts, the same frequency of disinfecting is required.

Employers will assign and train employees or other designees on the proper methods for thoroughly cleaning and disinfecting the high-touch surfaces.

Employers must provide appropriate and adequate supplies to meet the demands of routine cleaning and disinfection, and any deep cleaning required by subsection (i) of this section.

- (f) **Handwashing Stations.** Employers, housing operators, and transportation providers must supply adequate handwashing stations at every location and at all times that employees are acting within the scope of their employment.

All handwashing stations must have soap, tepid water, disposable paper towels, and a garbage receptacle. Handwashing stations must comply with WAC 296-307-09515.

Hand sanitizer is not an adequate substitute for a handwashing station. Hand sanitizer must instead be provided at high-traffic and other strategic locations, e.g., vehicles used to transport workers, where a handwashing station is impractical.

- (g) **Use of Handwashing Stations.** Employers must put in place adequate measures to ensure, at a minimum, that employees wash their hands for more than twenty (20) seconds at the following intervals:

- (i) Upon arriving at the worksite;
- (ii) Prior to the first rest break;
- (iii) Prior to the lunch break;
- (iv) After using the restroom;
- (v) Following the lunch break; and
- (vi) Prior to leaving the worksite and the end of the day.

- (h) **Educational Materials and Training.** Employers must provide adequate educational materials, including workplace posters, and training to educate employees about the risks of COVID-19 and the required safety protocols. All educational materials must be provided in

the language or languages the employees understand. The entire curriculum must be provided to new employees. Training on any *new* COVID-19 health and safety rules issued by federal, state, or local authorities relating to agricultural work must be refreshed following issuance.

At a minimum, educational materials and training must convey:

- (i) The importance of and method for handwashing and avoiding touching an individual's mouth, nose, and eyes;
  - (ii) How to recognize the signs, symptoms, and risk factors associated with COVID-19;
  - (iii) The current CDC, DOH, and L&I guidelines on how to prevent the spread of the virus;
  - (iv) The proper use of protective equipment, including how to safely put on and take off masks and other face coverings;
  - (v) Proper respiratory etiquette;
  - (vi) The importance of and method for promptly disinfecting frequently touched items;
  - (vii) The steps taken in the workplace to promote COVID-19 health and safety;
  - (viii) How to file a workplace complaint, providing information that, at a minimum, makes clear the process for contacting L&I's Division of Occupational Safety and Health, including the telephone number and a statement that complaints can be made anonymously;
  - (ix) The contents of the employer's COVID-19 Response Plan required under subsection (i), below;
  - (x) How to file for medical sick leave, paid sick leave, and/or workers compensation. Any employer believing to be exempt as a result of the 500-employee cap in the Family First Coronavirus Response Act must make clear to employees their belief that the exemption applies. Employers making this disclosure should also clarify whether they are providing alternate relief.
- (i) **COVID-19 Response Plan.** Employers are required to document and maintain a COVID-19 Response Plan. As per section (h)(ix), above, the plan must be made available to all employees in the language or languages the employees understand and must, at a minimum,

provide for:

- (i) The immediate shutdown, deep cleaning, and disinfecting of all areas where a symptomatic employee was present;
  - (ii) Immediate notice to employees who worked in close proximity of someone who has tested positive for COVID-19 of possible exposure;
  - (iii) Informing employees of their rights to secure compensation during any resulting quarantine period, including paid sick leave and the additional information required of exempt employers under subsection (h)(ix) above;
  - (iv) Assurance that ill employees stay home or remain isolated in housing, or leave the worksite if feeling or appearing ill;
  - (v) Immediately informing the relevant local health department of any employees testing positive for COVID-19 or sent to quarantine for possible exposure to the virus. The report shall include the grower's name, exact field location, and the names, addresses, and telephone numbers of impacted employees.
- (j) At the beginning of each day, employers must conduct a temperature check and review the symptom checklist with employees concerning themselves and their households. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

Employers are not required to maintain logs of the check-ins described by this subsection.

- (k) **Testing Generally.** Employers must ensure access to COVID-19 tests for symptomatic employees and other workers, when required by health department officials, within 24 hours. Employers must provide transportation as needed and designate a person or persons who will be readily identifiable as the testing facilitators.
- (l) **Best Practices.** Employers must keep up-to-date with guidance issued by the CDC, L&I, and DOH. To the extent feasible, employers should make every effort to implement any and all best practices to further protect employees. Specific guidance for the agricultural industry is found [here](#) and [here](#). If any permissive provision contained in the linked agricultural industry guidelines contradict the requirements of this document, “**Agricultural COVID-19 Requirements,**” this document controls.

Housing operators electing the “group shelter” option under WAC 246-358-002(e) and WAC 296-307-16102(e) should take extra measures to facilitate services (e.g., grocery delivery and internet access) to limit the opportunities for physical interaction with non-group members.

- (m) **Employee Rights.** An employee may refuse to perform unsafe work, including work made unsafe by COVID-19 hazards. It is unlawful for an employer to take adverse action against

an employee who has engaged in safety-protected activities under the law if the individual's work refusal meets certain legal requirements. More details are found here: [Safety and Health Discrimination in the Workplace brochure](#) (F417-244-000) / [Spanish Safety & Health Discrimination brochure](#) (F417-244-999).

Employees who choose to remove themselves from a worksite because they do not believe it is safe to work due to the risk of COVID-19 exposure may have access to certain leave or unemployment benefits.

Employers must provide high-risk individuals covered by Proclamation 20-46 with their choice of access to available employer-granted accrued leave or unemployment benefits if an alternative work arrangement is not feasible. Other employees may have access to expanded family and medical leave included in the Families First Coronavirus Response Act, unemployment benefits, or paid time off, depending on the circumstances. Additional information is available at <https://www.lni.wa.gov/agency/outreach/paid-sick-leave-and-coronavirus-covid-19-common-questions>.

- (n) Comply with all requirements of chapter 246-101 WAC and any orders issued under the authority of the local health jurisdiction.
- (o) **Testing Required.** Consistent with subsection (n) above, employers with COVID-19-positive employees must coordinate with the local health jurisdiction to identify the extent of the outbreak among the employer's workforce. Upon the occurrence of either of the following:
  - (i) The local health jurisdiction reports that the employer's workforce has more than nine positive cases within a 14-day window; or
  - (ii) The local health jurisdiction determines that the employer's workforce has an attack rate greater than or equal to 10 percent of the workforce within a 14-day window

the employer must ensure timely COVID-19 testing of the entire workforce. The employer must not permit any worker who declines a test to return to work.

For any employer whose workforce is divided between two or more workplaces, as defined under subsection (b)(x) above, the 14-day metrics set forth in subsections (i) and (ii) of this subsection apply to the *workplace*.

The foregoing does not apply if DOH reviews and approves a different testing strategy.

- (p) **Isolation.** [Removed] See WAC 296-307-16102(2)/WAC 246-358-002(2).

## OUTDOOR WORKSITES

### (1) General Requirements

- (a) **Applicability.** For purposes of this section, “outdoor worksites” includes orchards, vineyards, fields, and other substantially similar workplaces.
- (b) **Handwashing Stations.** In accordance with WAC 296-307-09515, handwashing stations must be placed no further than “one-quarter mile of each employee’s worksite in the field.” Additional portable handwashing stations meeting the requirements of **General Provisions**, subsection (f), must be placed within one hundred and ten (110) yards of employees at all times. The limited exception contained in **General Provisions**, subsection (f), does not apply for purposes of this subsection.
- (c) Employers must ensure that tools, implements, and other equipment not be shared without being fully wipe-sanitized between uses.

### (2) Special Requirements for Providers When an Employer or Temporary Worker Housing Supplier Makes the WAC 246-358-002(e)/296-307-16102(e) “Group Shelter” Election

- (a) Employers must ensure that shelter groups adhere to the requirements of subsections (1)(b) and (c) under **Outdoor Worksites** and the remainder of this section.
- (b) Shelter groups working at the same outdoor worksite must not, under any circumstances, commingle with others outside of the group. Additional precautions, including flexible scheduling, increased physical distancing beyond six feet, administrative controls, and/or physical barriers, may be needed to ensure compliance with this subsection.
- (c) If a shelter group consists of employees from more than one employer and/or worksite, members of the shelter group may work at different sites as long as they only work alongside others in their group.
- (d) Supervisors may supervise multiple shelter groups at one time. Supervisors must comply with the all requirements of this section, ensuring no proximate interaction with members of any shelter group.

## INDOOR WORKSITES

### (1) General Requirements

- (a) **Applicability.** For purposes of this section, “indoor worksites” includes dairies and other operations expressly identified in WAC 296-307-006 and conducted in an enclosed setting, and all fruit- and vegetable-packing warehouses, whether owned by the grower or producer or not.

(b) **Physical Distancing.** Employers are required to implement a physical distancing plan. The plan must set forth the ways in which a minimum of six feet of distancing will be achieved in all circumstances. For specific tasks where six feet of distance is not feasible, the following must be evident in the plan and in place at the worksite:

- (i) Physical barriers and, if necessary, negative pressure ventilation;
- (ii) The higher level of protective PPE as referenced in **General Provisions**, subsection (c), above; and
- (iii) Sufficient administrative controls to reduce interactions in all circumstances where proximity is unnecessary.

(c) Employers must ensure that tools, implements, and other equipment not be shared without being fully wipe-sanitized between uses.

**(2) Special Requirements for Providers When an Employer or Temporary Worker Housing Supplier Makes the WAC 246-358-002(e)/WAC 296-307-16102(e) “Group Shelter” Election**

(a) Employers must ensure that shelter groups adhere to the requirements of subsections (1)(b) and (c) under **Indoor Worksites** and the remainder of this section.

(b) Shelter groups working at the same indoor worksite must not, under any circumstances, commingle with others outside of the group. Additional precautions, including flexible scheduling, increased physical distancing beyond six feet, administrative controls, and/or physical barriers, may be needed to ensure compliance with this subsection.

Employers and housing operators must work to coordinate the arrival, workplace activity, and departure of employees to ensure physical distancing is maintained.

Workstations for up to fifteen (15) employees must be partitioned into a separate area and assigned to the individual shelter groups. Anyone from outside of the group must not enter the partitioned area.

(c) If a shelter group consists of employees from more than one employer and/or worksite, members of the shelter group may work at different sites as long as they only work alongside others in their group.

(d) Supervisors may supervise multiple shelter groups at one time. Supervisors must comply with the all requirements in this section, ensuring no proximate interaction with members of any shelter group.

## EMPLOYER- AND OPERATOR-PROVIDED TRANSPORTATION

### (1) General Requirements

- (a) **Applicability.** The following requirements apply whenever a transportation provider arranges transportation for an employee for any purpose whatsoever, including but not limited to, transportation to and from:
- (i) Workplaces;
  - (ii) Temporary worker housing; and
  - (iii) Grocery stores, financial institutions, and other locations to conduct personal business.

The following requirements do not apply to employees who commute in their own vehicles. Employees commuting separately must commute only with members of their household.

- (b) Providers must ensure that vehicles are disinfected between each use. Providers will designate and train employees or other designees on the proper methods for thoroughly cleaning and disinfecting the interior of the vehicle, the exterior door handles, and all other high-touch surfaces. Employers must pay employees for the time spent cleaning and disinfecting.
- (c) For vehicles with aisles between seats, providers must ensure that employees are positioned with one employee per side, staggered in an alternating, diagonal arrangement.
- (d) For vehicles with bench seating, providers must not allow more than two employees per bench, seated at opposite ends.
- (e) Employees must wear a face covering, mask, respirator, or other PPE in accordance with **General Provisions**, subsection (c), and the documents referenced therein.
- (f) **Drivers.** Drivers must:
- (i) Be separated from employees and other passengers by a plastic or plexiglass barrier and
  - (ii) Wear a face covering, mask, respirator, or other PPE in accordance with **General Provisions**, subsection (c), and the documents referenced therein.
- (g) To the extent feasible, windows must be open to promote air circulation.

### (2) Special Requirements for Providers When an Employer or Temporary Worker Housing Supplier Makes the WAC 246-358-002(e)/WAC 296-307-16102(e) “Group Shelter” Election

- (a) Unless otherwise excepted in this section, shelter groups must adhere to subsections (1)(a)

through (f) under **Employer and Operator-Provided Transportation**.

- (b) Under WAC 296-307-16102(e)(iii), the administrators of a group shelter, either the employer or the housing operator, “must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation.”

Except for the driver, a shelter group is not permitted to travel with others in the vehicle. Subsection (1)(e), relating to drivers, applies without exception.

- (c) When transporting a shelter group in a single vehicle, employees of the same group may sit less than six feet if wearing PPE consistent with the **General Provisions**, subsection (c), and the documents referenced therein.
- (d) As described in **Indoor Worksites**, subsection (2)(d), and **Outdoor Worksites**, subsection (2)(d), supervisors may supervise more than one shelter group. Supervisors who supervise more than one shelter group are expressly prohibited from travelling with employees on the same vehicle. Supervisors who also serve as the driver are exempt from this prohibition but must comply with the requirements in subsection (1)(f), above.
- (e) If a shelter group consists of employees from more than one employer and/or worksite, members of the shelter group may commute in different vehicles so long as they only travel with others in their group.

### **(3) Variances**

- (a) A provider may request a temporary variance from the requirements of this section, **Employer- and Operator-Provided Transportation**, when another means of providing equal protection is identified.
- (b) In order to receive a variance under this section, the provider must file a plan with L&I, which has the authority to approve alternatives meeting the standard in subsection (3)(a) above.
- (c) Providers must comply with all provisions of this section while any request for a variance is pending.

### **(4) Fully Vaccinated Shelter Groups – Effective May 9, 2021**

- (a) [Removed] See FULLY VACCINATED EMPLOYEES below.

## **FULLY VACCINATED EMPLOYEES**

- (1) Exemption.** Fully vaccinated employees are exempt from wearing a cloth face covering or mask, and physical distancing, except as otherwise required by non-COVID-19 related health and safety laws. Specifically, when all employees in a particular setting are fully vaccinated,

the following requirements do not apply:

- (a) GENERAL PROVISIONS ALL WORKSITES AND WORK-RELATED FUNCTIONS, sections (c) and (d);
- (b) INDOOR WORKSITES, section (b); and
- (c) TRANSPORTATION, sections (1)(c) through (f), and (2).

**(2) Vaccination verification.**

- (a) Employees who are vaccinated against COVID-19 by a two-dose mRNA vaccine (such as Moderna and Pfizer), or a single dose vaccine (such as Johnson & Johnson), are considered “fully vaccinated” two weeks after the final dose of vaccine (the second dose for a two-dose regimen, or the single dose for a single-dose regimen).

Employees who have been vaccinated outside the United States with a vaccine that has received World Health Organization (WHO) Emergency Use Listing (EUL) are considered fully vaccinated if the employee has completed the full vaccination series, and the appropriate amount of time has passed according to the manufacturer’s guidance for the employee to be fully protected.

- (b) Employees who have not received an FDA-authorized or WHO EUL COVID-19 vaccine must not be considered fully vaccinated.
- (c) The employer is not required to verify vaccination status if masking and physical distancing are to be maintained.
- (d) If an employee declines to provide verification of their vaccination status, they are not considered fully vaccinated.
- (e) The employer must have a demonstrable process to verify vaccination status but is not required to keep a copy of the occupant’s vaccination records, which may require secure and confidential handling as a medical record. The employer must establish a way of demonstrating they have verified vaccination status for occupants who are not masked and are not being required to maintain six-foot physical distanced.

Examples may include:

- (i) Creating a log of the names of employees who have been verified as fully vaccinated and the date that the verification was done;
- (ii) Checking vaccination status each day as employees enter a jobsite;
- (iii) Marking an employee’s badge, site credential, or other individually identified item to indicate the employee’s status as fully vaccinated;
- (iv) Documented employee attestations of vaccination; or

- (v) Other methods that demonstrate an operator has verified an employee has been fully vaccinated.
- (f) To verify vaccination status, employers can require employees to provide proof of vaccination status or a signed document attesting to the employee's fully vaccinated status. Proof of vaccination means one of the following:
  - (i) A CDC vaccination card, which includes name of person vaccinated, type of vaccine provided, and date last dose was administered;
  - (ii) A photo of a CDC vaccination card as a separate document or a photo of the occupant's vaccine card stored on a phone or electronic device;
  - (iii) Documentation of vaccination from a health care provider electronic health record or state immunization information system record; or
  - (iv) A signed self-attestation, which may be completed in hard copy or electronically.
- (g) The employer must provide evidence of their process to verify employee vaccination status to L&I upon request.